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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
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9 VIRGINIA F. SMITH,

10 Plaintiff,

11 v.
12

13 CAROLYN W. COLVIN,
14 Commissioner of Social Security,

15 Defendant.
16

No. 2:14-CV-00083-RHW

ORDER GRANTING IN PART
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

17 **BEFORE THE COURT** are cross-motions for summary judgment. ECF
18 Nos. 12, 15. Attorney Dana C. Madsen represents Virginia F. Smith (Plaintiff);
19 Special Assistant United States Attorney Franco L. Becia represents the
20 Commissioner of Social Security (Defendant). After reviewing the administrative
21 record and the briefs filed by the parties, the Court **GRANTS, in part,** Plaintiff's
22 Motion for Summary Judgment; **DENIES** Defendant's Motion for Summary
23 Judgment; and **REMANDS** the matter to the Commissioner for additional
24 proceedings pursuant to 42 U.S.C. § 405(g).

25 **JURISDICTION**

26 Plaintiff filed an application for Supplemental Security Income (SSI) on
27 September 1, 2010, alleging disability since February 1, 2008. Tr. 173-78. The
28 applications were denied initially and upon reconsideration. Tr. 1123-26, 128-29.

1 Administrative Law Judge (ALJ) Moira Ausems held a hearing on April 24, 2012
2 at which Plaintiff, represented by counsel, testified as did vocational expert (VE)
3 Sharon Welter. The ALJ issued an unfavorable decision on June 21, 2012. Tr. 22-
4 43. The Appeals Council denied review. Tr. 1-7. The ALJ's June 2012 decision
5 became the final decision of the Commissioner, which is appealable to the district
6 court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review
7 on February 2, 2014. ECF Nos. 1, 3.

8 **STATEMENT OF FACTS**

9 The facts of the case are set forth in the administrative hearing transcript, the
10 ALJ's decision, and the briefs of the parties. They are only briefly summarized
11 here.

12 Plaintiff was 48 years old at the time of the hearing. Tr. 92. Plaintiff
13 stopped going to school in tenth grade, but later obtained a GED. Tr. 80. Plaintiff
14 has worked as a cook and at a bakery. Tr. 79. Plaintiff last worked as a janitor
15 from March 2007 to January 2008. Tr. 55. Plaintiff stopped working because she
16 experienced symptoms that required her to undergo a hysterectomy. Tr. 55-56.
17 Plaintiff did not return to work because her back started hurting. Tr. 56.

18 Plaintiff testified that her back pain has gotten so bad that she "can hardly do
19 anything." Tr. 77. Plaintiff testified that she has headaches three to four times a
20 week; she estimated that she has migraine headaches twice a week. Tr. 63.
21 Plaintiff has depression and finds it hard to be around people. Tr. 66. Plaintiff
22 takes Prozac for her depression, which helps a little. Tr. 73. Plaintiff testified that
23 she has chest pain, which is worse in hot weather. Tr. 67-68. Plaintiff testified
24 that her legs move when she's trying to sleep. Tr. 70. Plaintiff testified that she
25 has acid reflux and pain in her right shoulder. Tr. 71.

26 Plaintiff testified that she can only sit for ten to fifteen minutes at a time,
27 before she has to stand. Tr. 59. Plaintiff testified that she can stand for about
28 fifteen minutes and walk about "a half-a-block to a block" before she needs to rest.

Tr. 60. Plaintiff did not think she could lift over ten pounds. Tr. 60. Plaintiff's neck pain limits her ability to turn her head and she has trouble bending over. Tr. 68. Plaintiff testified that she cannot lift her right arm above shoulder height. Tr. 71.

STANDARD OF REVIEW

The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The Court reviews the ALJ's determinations of law de novo, deferring to a reasonable interpretation of the statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only if it is not supported by substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put another way, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one rational interpretation, the court may not substitute its judgment for that of the ALJ. *Tackett*, 180 F.3d at 1097. Nevertheless, a decision supported by substantial evidence will still be set aside if the proper legal standards were not applied in weighing the evidence and making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988). If substantial evidence supports the administrative findings, or if conflicting evidence supports a finding of either disability or non-disability, the ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

SEQUENTIAL EVALUATION PROCESS

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *see Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the burden of

1 proof rests upon claimants to establish a prima facie case of entitlement to
2 disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is met once
3 claimants establish that physical or mental impairments prevent them from
4 engaging in their previous occupations. 20 C.F.R. § 416.920(a)(4). If claimants
5 cannot do their past relevant work, the ALJ proceeds to step five, and the burden
6 shifts to the Commissioner to show that (1) the claimants can make an adjustment
7 to other work, and (2) specific jobs exist in the national economy which claimants
8 can perform. *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193-1194
9 (2004). If claimants cannot make an adjustment to other work in the national
10 economy, a finding of “disabled” is made. 20 C.F.R. § 416.920(a)(4)(i-v).

11 **ADMINISTRATIVE DECISION**

12 On June 21, 2012, the ALJ issued a decision finding Plaintiff was not
13 disabled as defined in the Social Security Act.

14 At step one, the ALJ found Plaintiff had not engaged in substantial gainful
15 activity since July 24, 2009, the date of Plaintiff’s prior application. Tr. 27.

16 At step two, the ALJ determined Plaintiff had the following severe
17 impairments: chronic obstructive pulmonary disease; obesity; cervical, thoracic,
18 and lumbar degenerative disc disease/degenerative joint disease; migraine
19 headaches; major depressive disorder; avoidant personality disorder; and, cannabis
20 dependence. Tr. 27.

21 At step three, the ALJ found Plaintiff did not have an impairment or
22 combination of impairments that met or medically equaled the severity of one of
23 the listed impairments. Tr. 31.

24 At step four, the ALJ assessed Plaintiff’s residual function capacity (RFC)
25 and determined she could perform light work that did not require

26
27 more than occasional climbing of ramps or stairs, balancing, stooping,
28 kneeling, crouching, and crawling. She should avoid climbing
ladders, ropes or scaffolds. She should avoid concentrated exposure

1 to extreme cold, fumes, odors, dusts, gases, poor ventilation, etc. She
2 should avoid concentrated exposure to hazards such as machinery or
3 heights. She is capable of carrying out simple, repetitive tasks with no
4 more than occasional contact with the general public and no work
performed in a setting involving dealing with large crowds.

5 Tr. 33. The ALJ concluded that Plaintiff was able to perform her past relevant
6 work as a cleaner/housekeeper and sales clerk, food. Tr. 36.

7 At step five, the ALJ determined that even if Plaintiff is limited to sedentary
8 work, there were other jobs that Plaintiff could perform, including the jobs of
9 sewing machine operator or production assembler. Tr. 36. The ALJ thus
10 concluded Plaintiff was not under a disability within the meaning of the Social
11 Security Act at any time from July 24, 2009, through the date of the ALJ's
12 decision. Tr. 37.

13 ISSUES

14 The question presented is whether substantial evidence supports the ALJ's
15 decision denying benefits and, if so, whether that decision is based on proper legal
16 standards. Plaintiff contends the ALJ erred by (1) failing to properly credit
17 Plaintiff's testimony about the severity of her symptoms; (2) failing to properly
18 consider and weigh the psychological opinion evidence; and, (3) failing to properly
19 evaluate the evidence of Plaintiff's physical impairments.

20 DISCUSSION

21 A. Credibility

22 Plaintiff contests the ALJ's adverse credibility determination. ECF No. 12
23 at 12-13.

24 It is generally the province of the ALJ to make credibility determinations,
25 *Andrews*, 53 F.3d at 1039, but the ALJ's findings must be supported by specific
26 cogent reasons, *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent
27 affirmative evidence of malingering, the ALJ's reasons for rejecting the claimant's
28

1 testimony must be “specific, clear and convincing.” *Smolen v. Chater*, 80 F.3d
2 1273, 1281 (9th Cir. 1996). “General findings are insufficient: rather the ALJ
3 must identify what testimony is not credible and what evidence undermines the
4 claimant’s complaints.” *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995).

5 The ALJ found Plaintiff not fully credible concerning the intensity,
6 persistence, and limiting effects of her symptoms. Tr. 34. The ALJ reasoned that
7 Plaintiff was less than credible because (1) her symptom reporting was not
8 supported by the objective medical evidence and treatment notes, (2) she received
9 only conservative treatment, (3) she did not seek mental health counseling, (4) she
10 made a variety of inconsistent statements, and (5) her reporting was contrary to her
11 activities of daily living.

12 **1. Contrary to the objective medical evidence and treatment notes**

13 The ALJ noted that Plaintiff’s complaints of daily migraines were not
14 supported by treatment notes. Tr. 34. The ALJ noted that Plaintiff’s back pain was
15 not supported by physical examinations and x-rays showed only minimal or mild
16 findings. Tr. 34 (citing Tr. 615-20 (A. Peter Weir, M.D. opining that Plaintiff has
17 “no functional limitations,” and x-rays revealing “[m]ild leftward curvature of
18 thoracolumbar spine . . . [and] [m]ild multilevel disc degeneration”)).

19 Although it cannot serve as the sole ground for rejecting a claimant’s
20 credibility, objective medical evidence is a “relevant factor in determining the
21 severity of the claimant’s pain and its disabling effects.” *Rollins v. Massanari*, 261
22 F.3d 853, 857 (9th Cir. 2001).

23 Substantial evidence supports the ALJ’s finding that objective evidence of
24 Plaintiff’s back pain and migraine headaches does not support the level of severity
25 alleged by Plaintiff. See Tr. 34, 615-20. Plaintiff argues that “there are references
26 throughout the record concerning [Plaintiff’s] headaches.” ECF No. 12 at 13
27 (citing Tr. 529-30, 581-82, 628-30). But as noted by Defendant, some of these
28 references were made prior to the relevant period (Tr. 529-30), and the other

1 references (Tr. 581-82, 628-30) do not contradict the ALJ's finding that Plaintiff
2 did not regularly report migraine symptoms. ECF No. 15 at 9. Plaintiff further
3 argues that the ALJ may not rely solely on objective evidence to discredit Plaintiff.
4 ECF No. 12 at 13. As discussed *infra*, the ALJ provided additional valid reasons
5 to discredit Plaintiff; therefore, this argument fails. The fact that objective medical
6 evidence does not support Plaintiff's allegations of disabling back pain and
7 migraine headaches is a specific, clear, and convincing reason to discredit Plaintiff.

8 **2. Conservative treatment**

9 The ALJ noted that Plaintiff took over-the-counter medication for her
10 migraines. Tr. 34.

11 Conservative treatment can be "sufficient to discount a claimant's testimony
12 regarding [the] severity of an impairment." *Parra v. Astrue*, 481 F.3d 742, 751
13 (9th Cir. 2007).

14 At the hearing, Plaintiff testified that she takes "Excedrin Migraine" and will
15 put a cold rag over her eyes. Tr. 63-64. The ALJ reasonably inferred that if
16 Plaintiff's migraines were not severe enough for her to seek prescription
17 medication or other treatment, then the migraines were not as frequent or disabling
18 as she alleged. This is a specific, clear, and convincing reason to discredit
19 Plaintiff.

20 **3. Failure to seek treatment**

21 The ALJ noted that Plaintiff had not sought counseling and had refused
22 counseling when it was offered to her. Tr. 34 (citing Tr. 573 (Plaintiff reporting
23 she was "not interested in counseling")).

24 Unexplained or inadequately explained reasons for failing to seek medical
25 treatment cast doubt on a claimant's subjective complaints. 20 C.F.R. § 416.930;
26 *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989);

27 Substantial evidence supports the ALJ's finding that Plaintiff's failure to
28 seek mental health counseling detracts from her credibility. Numerous medical

1 providers recommended that Plaintiff should participate in therapy. *See, e.g.*, Tr.
2 446, 573, 652, 661. At the hearing, Plaintiff acknowledged that counseling would
3 “probably . . . help,” but she didn’t know where to seek counseling. Tr. 72. As
4 argued by Plaintiff, it is “a questionable practice to chastise one with a mental
5 impairment for the exercise of poor judgment in seeking rehabilitation,” *Nguyen v.*
6 *Chater*, 100 F.3d 1462, 1465 (9th Cir. 1996). In this case, however, Plaintiff’s
7 failure to follow the recommendations of her medical providers, and her awareness
8 that counseling could help her, supports that Plaintiff’s resistance to treatment was
9 more a personal choice, rather than attributable to her mental impairment. *See*
10 *Molina*, 674 F.3d at 114. Plaintiff’s failure to seek mental health counseling is a
11 specific, clear, and convincing reason to discredit her.

12 **4. Inconsistent statements**

13 The ALJ noted a number of inconsistencies that detracted from Plaintiff’s
14 credibility. The ALJ noted (1) Plaintiff inconsistently reported her number of
15 suicide attempts, Tr. 563-79, 683; (2) Plaintiff claimed to need a cane, but a
16 physical examination revealed that, even without a cane, she could walk without
17 difficulty, Tr. 618; (3) Plaintiff inconsistently reported when her back pain started,
18 Tr. 478, 615; (4) tests results suggested that Plaintiff was exaggerating or over-
19 reporting her symptoms, Tr. 445, 643, 653, 687-88; (5) Plaintiff inconsistently
20 reported childhood abuse, Tr. 595, 656; (6) in February 2012, Plaintiff reported to
21 Dr. Rosekrans that she had not worked for ten years, when it appears she worked in
22 2008 and 2009, Tr. 682.

23 In determining a claimant’s credibility, the ALJ may consider “ordinary
24 techniques of credibility evaluation, such as the claimant’s reputation for lying,
25 prior inconsistent statements . . . and other testimony by the claimant that appears
26 less than candid.” *Smolen*, 80 F.3d at 1284.

27 The inconsistencies identified by the ALJ provide a substantial basis to
28 conclude that Plaintiff is less than credible. Plaintiff argues that these

1 inconsistencies are insignificant and some can be explained by the passage of time
2 and Plaintiff's traumatic history. ECF No. 12 at 14. The Court disagrees with
3 Plaintiff that some of the inconsistencies identified by the ALJ are minor. To the
4 contrary, the Court finds the inconsistencies identified by the ALJ relate to
5 Plaintiff's mental health, the cause and severity of her impairments, and Plaintiff's
6 veracity. Plaintiff further argues that her invalid test score "does not reflect on her
7 credibility as much as it affects the usefulness of the report." ECF No. 12 at 14.
8 The Court further disagrees. *See Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir.
9 2002) (a claimant's failure to give maximum or consistent effort during
10 examinations is a reason to discredit the claimant). Plaintiff's inconsistent
11 reporting is a specific, clear, and convincing reason to discredit Plaintiff.

12 **5. Activities**

13 The ALJ noted Plaintiff's testimony that she rarely leaves her room and has
14 trouble doing daily activities inconsistent with reports that she is independent with
15 self-care, can perform simple household tasks including laundry and cooking
16 simple meals, go to the store, ride the bus, visit with her son and one friend, write a
17 book, read, use a computer, take care of children residing in her home, and manage
18 her own money. Tr. 34 (citing Tr. 444-45, 595-99, 617, 682).

19 A claimant's daily activities may support an adverse credibility finding if (1)
20 the claimant's activities contradict his or her other testimony, or (2) "the claimant
21 is able to spend a substantial part of his day engaged in pursuits involving
22 performance of physical functions that are transferable to a work setting." *Orn v.*
23 *Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (citing *Fair*, 885 F.2d at 603). "The ALJ
24 must make 'specific findings relating to [the daily] activities' and their
25 transferability to conclude that a claimant's daily activities warrant an adverse
26 credibility determination." *Id.* (quoting *Burch v. Barnhart*, 400 F.3d 676, 681 (9th
27 Cir. 2005)). A claimant need not be "utterly incapacitated" to be eligible for
28 benefits. *Fair*, 885 F.2d at 603.

1 The Court finds the ALJ may have erred in using Plaintiff's daily activities
 2 to discredit her, but any error is harmless. The ALJ did not cite to Plaintiff's
 3 testimony that she rarely leaves her room or has trouble with household chores.
 4 There are some references that Plaintiff prefers to isolate in her room rather than
 5 socialize, *see* Tr. 203, but Plaintiff also reported that she is capable of doing some
 6 chores, going to the store, and attending to her personal care, although such
 7 activities are difficult for her. *See* Tr. 72-74, 200-04, 265-69. As substantial
 8 evidence does not support the inconsistency identified by the ALJ, the ALJ should
 9 not have used Plaintiff's activities to discredit her. Any error is harmless,
 10 however, given the number of other valid reasons provided by the ALJ to discredit
 11 Plaintiff. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008) (An error
 12 is harmless when "it is clear from the record that the . . . error was inconsequential
 13 to the ultimate nondisability determination."); *Carmickle v. Comm'r, Soc. Sec.*
 14 *Admin.*, 533 F.3d 1160, 1163 (9th Cir. 2008) (upholding adverse credibility finding
 15 where ALJ provided four reasons to discredit claimant, two of which were invalid).

16 **6. Conclusion**

17 The ALJ gave several specific, clear, and convincing reasons for finding
 18 Plaintiff less than credible and these reasons are supported by substantial evidence.
 19 Any error made by the ALJ in using Plaintiff's activities to discredit her is
 20 harmless given the number of other valid reasons provided by the ALJ.

21 **B. Evaluation of Medical Evidence**

22 Plaintiff argues the ALJ failed to properly consider and weigh the medical
 23 opinion expressed by Drs. Mabey, Arnold, Rosekrans, Quackenbush, and Ugorji.
 24 ECF No. 12 at 15-20.

25 "In making a determination of disability, the ALJ must develop the record
 26 and interpret the medical evidence." *Howard ex. rel. Wolff v. Barnhart*, 341 F.3d
 27 1006, 1012 (9th Cir. 2003).

1 In weighing medical source opinions, the ALJ should distinguish between
 2 three different types of physicians: (1) treating physicians, who actually treat the
 3 claimant; (2) examining physicians, who examine but do not treat the claimant;
 4 and, (3) nonexamining physicians who neither treat nor examine the claimant.
 5 *Lester*, 81 F.3d at 830. The ALJ should give more weight to the opinion of a
 6 treating physician than to the opinion of an examining physician. *Orn*, 495 F.3d at
 7 631. The ALJ should give more weight to the opinion of an examining physician
 8 than to the opinion of a nonexamining physician. *Id.*

9 When a physician's opinion is not contradicted by another physician, the
 10 ALJ may reject the opinion only for "clear and convincing" reasons. *Baxter v.*
 11 *Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991). When a physician's opinion is
 12 contradicted by another physician, the ALJ is only required to provide "specific
 13 and legitimate reasons" for rejecting the opinion of the first physician. *Murray v.*
 14 *Heckler*, 722 F.2d 499, 502 (9th Cir. 1983).

15 To the extent that Drs. Mabee, Arnold, Rosekrans, Quackenbush, and Ugorji
 16 assessed Plaintiff with limitations that would prevent her from working, these
 17 opinions are contradicted by the opinions of State agency consultant physicians
 18 Edward Beaty, Ph.D., Norman Staley, M.D., Rita Flanagan, Ph.D., and Guthrie
 19 Turner, M.D. Tr. 94-105, 107-118. Therefore, the ALJ was required to provide
 20 specific and legitimate reasons for rejecting the opinions of Drs. Mabee, Arnold,
 21 Rosekrans, Quackenbush, and Ugorji.

22 **1. W. Scott Mabee, Ph.D.**

23 Dr. Mabee completed psychological/psychiatric evaluations of Plaintiff in
 24 March 2008, February 2009, and April 2010. Tr. 330-42, 439-47, 638-46, 658-65.

25 In the February 2009 evaluation, Dr. Mabee diagnosed Plaintiff with major
 26 depressive disorder recurrent moderate. Tr. 440, 446. Dr. Mabee assessed
 27 Plaintiff with no more than mild cognitive limitations, but found Plaintiff markedly
 28 and moderately limited in her social functioning. Tr. 441. Dr. Mabee concluded

1 [Plaintiff's] depression and perceived physical ailments will likely
2 interfere with her ability to tolerate the stress and pressures of a work
3 environment. It is important that she improve her coping skills so that
4 she can tolerate stressful work situations. In addition, her depression
5 is likely to negatively impact social interactions in a work
6 environment until her symptoms are better stabilized.

7 [Plaintiff's] low average judgment abilities and a slow pace of
8 performance is likely due to the severity of her psychological distress.
9 Her ability to persist in a regular work environment is moderately
10 limited until she receives appropriate mental health interventions.

11 Tr. 446.

12 In the April 2010 evaluation, Dr. Mabee diagnosed Plaintiff with Major
13 Depressive D/O-Recurrent-Moderate with Interepisode Recovery and Avoidant
14 Personality D/O. Tr. 640. Dr. Mabee found Plaintiff markedly limited in her
15 ability to relate appropriately to co-workers and supervisors, but found Plaintiff
16 only mildly or moderately limited in other areas of cognitive and social
17 functioning. Tr. 641. Dr. Mabee concluded that Plaintiff

18 will be limited to working in an environment not requiring social
19 interaction with others. Her reported physical symptoms . . . may also
20 create limitations in terms of the type of work she can do. She would
21 be most successful working by herself doing familiar tasks requiring
22 limited interaction with supervisors, other employees or the public."

23 Tr. 641. Dr. Mabee recommended Plaintiff engage in individual therapy twice a
24 month and be evaluated for psychotropic medications. Tr. 642.

25 The ALJ gave little weight to Dr. Mabee's February 2009 and 2010
26 evaluations. The ALJ reasoned that Dr. Mabee "placed undue reliance upon the
27 subjective allegations of an individual in a setting where she was being evaluated
28 for the specific purpose of determining entitlement to state general assistance
benefits." Tr. 35. The ALJ further reasoned that Dr. Mabee did not account for

1 Plaintiff's invalid test profile and her marijuana use. Tr. 35. The ALJ gave weight
2 to Dr. Mabee's 2010 opinion that Plaintiff would be most successful doing familiar
3 tasks requiring limited interactions with others. Tr. 35 (citing Tr. 641). The ALJ
4 found this opinion consistent with Dr. Arnold's opinion that Plaintiff was capable
5 of understanding and carrying out simple and somewhat detailed instructions and
6 would work best with minimal interaction with others. Tr. 35-36 (citing Tr. 651).
7 The ALJ found these opinions consistent with the opinions of other reviewing and
8 examining sources. Tr. 36 (citing Tr. 94-105, 107-118, 595-99).

9 Plaintiff argues that the ALJ erred by rejecting Dr. Mabee's March 2008 and
10 February 2009 opinions. ECF No. 12 at 16-17. As argued by Defendant, these
11 opinions were rendered prior to the relevant period of this case, and, presumably,
12 were considered with Plaintiff's previous application. ECF No. 15 at 19 n.4. *See*
13 *also Carmickle*, 533 F.3d at 1165 ("Medical opinions that predate the alleged onset
14 of disability are of limited relevant."). But the ALJ did discuss Dr. Mabee's 2009
15 evaluation; therefore, the Court will limit its analysis to whether the ALJ erred in
16 evaluating Dr. Mabee's 2009 and 2010 evaluations.

17 Plaintiff argues that the ALJ erred by rejecting Dr. Mabee's opinions on
18 account of the fact that Plaintiff sought the evaluation as part of her application for
19 state benefits. ECF No. 12 at 16 (citing Tr. 35). The Court agrees with Plaintiff
20 that this is typically not a valid reason to reject a medical source opinion. *See*
21 *Lester*, 81 F.3d at 832 ("[T]he purpose for which medical reports are obtained does
22 not provide a legitimate basis for rejecting them.").

23 Plaintiff further argues that the ALJ improperly found that Dr. Mabee's
24 evaluations "placed overreliance on Plaintiff's subjective complaints." ECF No.
25 12 at 16. The Court again agrees that the ALJ erred by not providing any specific
26 reasoning regarding how Dr. Mabee placed undue reliance on Plaintiff's subjective
27 reporting. The ALJ seemed to tie this reasoning to her reasoning regarding how
28 Plaintiff sought the evaluation for purposes of obtaining state benefits. *See* Tr. 35

1 (ALJ reasoning that Dr. Mabee “placed undue reliance upon the subjective
2 allegations of [Plaintiff] in a setting where she was being evaluated for the specific
3 purpose of determining entitlement to state general assistance benefits.”).

4 Plaintiff further argues that although “there was some indication of over
5 reporting symptoms, Dr. Mabee surely did not base his opinions on invalid
6 sources.” ECF No. 12 at 17. The Court again agrees with Plaintiff that the ALJ
7 erred in finding that Dr. Mabee’s conclusions are “absent consideration of the
8 invalid test results.” Tr. 35 (citing Tr. 445, 643). In the 2009 evaluation, Plaintiff
9 had an invalid MMPI-2-RF¹ test score, Tr. 445, but other valid test scores and Dr.
10 Mabee’s mental status exam provided alternate bases for Dr. Mabee’s opinions. In
11 Dr. Mabee’s 2010 evaluation, he concluded that Plaintiff’s test scores were “valid
12 and interpretable,” although Plaintiff’s “level of depressive symptoms is even
13 unusual in clinical samples.” Tr. 643. Contrary to the ALJ’s reasoning, Dr. Mabee
14 did appear to account for Plaintiff’s questionable test scores and did not rely solely
15 on these scores in assessing Plaintiff’s limitations.

16 Finally, Plaintiff does not contest the ALJ’s citation to Plaintiff’s marijuana
17 use as a reason to reject Dr. Mabee’s opinions. But the Court finds that Plaintiff’s
18 limited marijuana use is not a legitimate reason to reject Dr. Mabee’s opinions.
19 The record does not support that Plaintiff used marijuana on a regular basis. And
20 the ALJ’s suggestion that Plaintiff was under the influence of marijuana at Dr.
21 Mabee’s 2010 evaluation because she “appeared sleepy and lethargic,” Tr. 35, is
22 tenuous and unsupported.

23 In conclusion, the ALJ failed to provide specific and legitimate reasons for
24 rejecting Dr. Mabee’s opinions, especially Dr. Mabee’s assessment of marked
25 social limitations. On remand, the ALJ shall credit Dr. Mabee’s evaluations or
26 provide other reasons for rejecting them.

27 //

28 ¹Minnesota Multiphasic Personality Inventory-2 Restructured Form.

2. John Arnold, Ph.D.

Dr. Arnold completed a psychological evaluation of Plaintiff in October 2010. Tr. 648-56. Dr. Arnold diagnosed Plaintiff with major depressive disorder, recurrent moderate; pain disorder associated with both psychological factors and a general medical condition; and, avoidant personality disorder. Tr. 650. Dr. Arnold found Plaintiff markedly limited in her ability to relate appropriately to co-workers and supervisors. Tr. 651. Dr. Arnold concluded

[Plaintiff] will be limited to working in an environment not requiring social interaction with others . . . She would be most successful working by herself doing familiar tasks requiring limited interaction with supervisors, other employees or the public. Cognitively, she should be able to understand and follow simple to moderately complex tasks; however, poor motivation would likely interfere.

Tr. 651.

Dr. Arnold completed a second psychological evaluation of Plaintiff in September 2011. Tr. 658-666. Dr. Arnold diagnosed Plaintiff with major depressive disorder, recurrent moderate; pain disorder associated with both psychological factors and a general medical condition; and, avoidant personality disorder. Tr. 659. Dr. Arnold found Plaintiff markedly limited in her ability to communicate and perform effectively in a work setting with public contact and her ability to maintain appropriate behavior in a work setting. Tr. 660. Dr. Arnold concluded

[Plaintiff] is capable of understanding and carrying out simple and somewhat detailed instructions. She can concentrate for short periods of time. She can complete simple tasks without close supervision and not disrupt others. She would work best in positions that have minimal interaction with others. She can use the bus for transportation. She can recognize hazards and take appropriate precautions.

1
2 Tr. 661.

3 The ALJ rejected Dr. Arnold's opinions based substantially on the same
4 reasoning as the ALJ gave in rejecting Dr. Mabee's opinions. Tr. 35. *Supra*, the
5 Court identified a number of errors made by the ALJ in rejecting Dr. Mabee's
6 opinions. These errors equally apply to the ALJ's evaluation of Dr. Arnold's
7 opinions. In particular, the ALJ did not provide reasoning to reject the marked
8 social limitations assessed by Dr. Arnold. On remand, the ALJ shall credit Dr.
9 Arnold's opinions or give other legitimate reasons for rejecting them.

10 **3. Frank Rosekrans, Ph.D.**

11 Dr. Rosekrans completed a psychological evaluation of Plaintiff in February
12 2012. Tr. 681-90. Dr. Rosekrans diagnosed Plaintiff with major depressive
13 disorder, somatization disorder, and personality disorder NOS. Tr. 681, 690. Dr.
14 Rosekrans concluded that Plaintiff had the residual capacity to "do very little
15 physically. She can sit at a table and play computer games." Tr. 682. Dr.
16 Rosekrans went on to chronicle some of Plaintiff's reports. Tr. 687-90. Dr.
17 Rosekrans organized Plaintiff's reporting into the categories of "Clinical Features,"
18 "Self-Concept," and "Interpersonal and Social Environment," but did not assess
19 Plaintiff with any clear limitations. Tr. 687-90.

20 The ALJ gave "absolutely no weight" to Dr. Rosekrans opinions, noting that
21 they were "rather nonsensical." Tr. 35.

22 Plaintiff argues that the ALJ provided "no explanation to illuminate this bold
23 statement." ECF No. 12 at 17. The Court is inclined to agree with the ALJ's
24 criticism of Dr. Rosekrans' opinions. Dr. Rosekrans' evaluation is difficult to
25 follow, seems disorganized, and fails to assess Plaintiff with any clear limitations.
26 Nevertheless, the Court agrees with Plaintiff that the ALJ's reasoning, i.e., that Dr.
27 Rosekrans opinion is "rather nonsensical," Tr. 35, is not a specific and legitimate
28

1 reason to reject it. On remand, the ALJ shall credit Dr. Rosekrans' opinions or
2 give specific and legitimate reasons for rejecting them.

3 **4. Robert L. Quackenbush, Ph.D.**

4 Dr. Quackenbush completed a psychological evaluation of Plaintiff in
5 January 2011. Tr. 595-99. Dr. Quackenbush diagnosed Plaintiff with Depressive
6 Disorder NOS. Tr. 598. Dr. Quackenbush concluded

7
8 The prognosis for [Plaintiff] is guarded to fair. [Plaintiff] appears
9 depressed at this time, and this clearly impedes her capacity to
10 entertain potential employment prospects. In addition, social anxieties
11 would preclude many work roles, but would not be a factor in the
12 solitary role of building maintenance. However, [Plaintiff's] physical
capacities may preclude such employment (deferred to medical
providers).

13 Note that mild to moderated pain behaviors were observed, albeit no
14 medical records were reviewed. Cognitively, [Plaintiff] can
15 understand and retain simple to detailed information, and she appears
16 capable of making simple judgments and work decisions. Socially,
17 [Plaintiff] was generally friendly, although distant, and she
18 communicated effectively with the examiner throughout the course of
the present exam.

19 Tr. 598-99.

20 The ALJ gave some weight to Dr. Quackenbush's opinions, at least to Dr.
21 Quackenbush's opinion that Plaintiff was able to understand and retain simple to
22 detailed information and appeared capable of making simple judgments and work
23 decisions. Tr. 36.

24 Plaintiff argues that the ALJ gave no reason for rejecting Dr. Quackenbush's
25 opinions that Plaintiff's prognosis was "fair to guarded" and that her depression
26 clearly impedes her capacity to entertain employment prospects and her social
27 anxieties would preclude many roles. ECF No. 12 at 18. The Court agrees that the
28 ALJ did not adequately account for Dr. Quackenbush's opinion that Plaintiff's

1 “social anxieties would preclude many work roles, but would not be a factor in the
2 solitary role of building maintenance.” Tr. 598. This opinion seems consistent
3 with the marked social limitations assessed by Drs. Mabee and Arnold. *See* Tr.
4 441, 641, 651, 660-61. On remand, the ALJ shall credit Dr. Quackenbush’s
5 opinions or give specific and legitimate reasons for rejecting them.

6 **5. Kingsley Ugorji, M.D.**

7 Dr. Ugorji was Plaintiff’s primary care provider at Community Health
8 Association of Spokane since approximately August 2009. *See* Tr. 478-81, 586-
9 94, 622-36, 672-79. Dr. Ugorji completed a physical evaluation of Plaintiff in
10 April 2010. Tr. 667-70. Dr. Ugorji diagnosed Plaintiff with moderate to severe
11 back pain, gastroesophageal reflux disease, mild to moderate dysphagia, mild to
12 moderate depression, restless leg syndrome, and insomnia. Tr. 669. Dr. Ugorji
13 opined that Plaintiff was limited to sedentary work. Tr. 669. Dr. Ugorji concluded
14 that Plaintiff had “chronic low back pain with multi-level arthritis and she is very
15 unlikely to fully recover from the back pain.” Tr. 670.

16 The ALJ gave no weight to Dr. Ugorji’s opinion that Plaintiff was limited to
17 sedentary work and was “very unlikely to fully recover from her back pain.” Tr.
18 35 (citing Tr. 670). The ALJ reasoned this opinion was not supported by objective
19 medical evidence and based primarily on Plaintiff’s statements. Tr. 35 (citing Tr.
20 672-79).

21 Plaintiff argues that Dr. Ugorji’s opinions are entitled to controlling weight
22 as Dr. Ugorji was Plaintiff’s treating physician. ECF No. 12 at 20. Plaintiff argues
23 that the ALJ does not explain how Dr. Ugorji’s opinions are based on Plaintiff’s
24 subjective complaints and argues that there is objective evidence in Plaintiff’s
25 CHAS file to justify Dr. Ugorji’s opinions. ECF No. 12 at 20.

26 The Court is inclined to find any error made by the ALJ in rejecting Dr.
27 Ugorji’s opinion harmless. Even if the ALJ had fully credited Dr. Ugorji’s opinion
28 that Plaintiff was limited to sedentary work, the ALJ’s alternative step five finding

1 takes into account such a limitation. Tr. 36. That is, even if Plaintiff was limited
2 to sedentary work, and taking into account the other limitations contained in the
3 ALJ's RFC determination, the ALJ made adequate findings to conclude that
4 Plaintiff would be capable of working as a sewing machine operator or as a
5 production assembler. Tr. 36. But due to other errors made by the ALJ in
6 evaluating the medical evidence discussed *supra*, on remand, the ALJ may need to
7 reevaluate Dr. Ugorji's opinions.

8 REMEDY

9 The Court has the discretion to remand the case for additional evidence and
10 findings or to award benefits. *Smolen*, 80 F.3d at 1292. The Court may award
11 benefits if the record is fully developed and further administrative proceedings
12 would serve no useful purpose. *Id.* Remand is appropriate when additional
13 administrative proceedings could remedy defects. *Rodriguez v. Bowen*, 876 F.2d
14 759, 763 (9th Cir. 1989). In this case, the Court finds that further proceedings are
15 necessary for a proper determination to be made.

16 On remand, the ALJ shall reconsider the limitations assessed by Drs. Mabee,
17 Arnold, Rosekrans, Quackenbush, and Ugorji, especially Plaintiff's social
18 limitations. The ALJ need not reevaluate Plaintiff's credibility as the Court finds
19 the ALJ's adverse credibility finding supported by substantial evidence and free of
20 harmful legal error. At the new administrative hearing, the ALJ, if warranted, shall
21 elicit the testimony of a medical expert to assist the ALJ in determining Plaintiff's
22 residual functional capacity (RFC). The ALJ shall present the RFC assessment to
23 a VE to help determine if Plaintiff is capable of performing any other work
24 existing in sufficient numbers in the national economy.

25 CONCLUSION

26 Having reviewed the record and the ALJ's findings, the Court finds the
27 ALJ's decision is not supported by substantial evidence and contains legal error.
28 Accordingly, **IT IS ORDERED:**

1 1. Defendant's Motion for Summary Judgment, **ECF No. 15**, is
2 **DENIED**.

3 2. Plaintiff's Motion for Summary Judgment, **ECF No. 12**, is
4 **GRANTED, in part**, and the matter is **REMANDED** to the Commissioner for
5 additional proceedings consistent with this Order.

6 3. Application for attorney fees may be filed by separate motion.

7 The District Court Executive is directed to file this Order and provide a copy
8 to counsel for Plaintiff and Defendant. **Judgment shall be entered for Plaintiff**
9 and the file shall be **CLOSED**.

10
11 **DATED** this 7th day of October, 2015.

12
13 *s/Robert H. Whaley*
14 ROBERT H. WHALEY
15 Senior United States District Judge
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